



February 18, 2000

Mr. James G. Nolan
Supervising Attorney
Legal Department
Texas Workforce Commission
101 East 15th Street
Austin, Texas 78778-0001

OR2000-0622

Dear Mr. Nolan:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 132477.

The Texas Workforce Commission (the "commission") received a request for information from an applicant for the commission's job posting number 4136LL. You indicate that a diligent search "failed to turn up any trace" of the P-30 internal job transfer request form sought by this requestor, but that you will release this form if and when it is located. You also indicate that you have released the interview scoring matrix used in evaluating the requestor, and the cumulative scores of the applicants, in response to earlier requests by this requestor. You seek to withhold "the selection panel note sheets containing the interview questions, and notes taken of the applicant responses to the interview questions" and "the desired or 'correct' responses to interview questions." You have submitted this information to this office for review, claiming that it is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122(b) includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122(b) where release of "test items" might compromise the effectiveness

of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Further, when answers to test questions might reveal the questions themselves, the answer may also be withheld under section 552.122. *Id.* at 8; *see* Attorney General Opinion JM-640 at 3 (1987).

The submitted Accounts Examiner Interview Questions documents consist of 28 items, which we have numbered for purposes of reference. We believe that items 1, 2, 5, 6, 9, 10, 12, 13, 14, and 15, including questions, notes reflecting the requestor's answers, and the preferred answers, are protected "test items." They "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual" and are a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." Open Records Decision No. 626 at 6 (1994). The remaining items are not "test items" as contemplated by section 552.122(b), and must be released, as this information "does not involve an evaluation of an applicant's knowledge in a particular area." *Id.* at 8.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

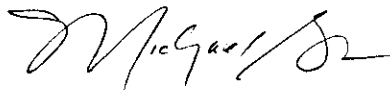
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jay Burns".

Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref: ID# 132477

Encl Submitted documents

cc: Ms. Victoria Boren
700 W. Magnolia Avenue
Iowa Park, Texas 76367
(w/o enclosures)